

**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR**

:::

ORDER

**Management Committee, Shri Sarvajanik Middle School
Vs.
Rajasthan Non Governmental Educational Trust,
Tribunal Jaipur & Ors.**

**S.B. CIVIL WRIT PETITION
NO.3335/2003 UNDER
ARTICLE 226 OF THE
CONSTITUTION OF INDIA.**

DATE OF ORDER :: 15th December , 2006

PRESENT

HON'BLE JUSTICE SHRI MOHAMMAD RAFIQ

Mr.Shreedhar Purohit,]
Mr.Mukesh Rajpurohit'], for the petitioners.
Mr.Rajesh Panwar, for the respondents.

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BY THE COURT:

The Management Committee of Shri Sarvajanik Middle School, Sardarpura has filed this writ petition assailing the judgment dated 16.8.2002 passed by the Rajasthan Non Governmental Educational Trust Tribunal, Jaipur (for short the Tribunal) whereby the respondent no.2 Suraj Karan Suthar who was retired from their services as teacher on attaining the age of superannuation on 4.3.1999 was held entitled to the

payment of leave encashment and gratuity together with interest @ 9% per annum and the benefit of revision of pay in terms of Revised Pay Scales Rules, 1998.

I have heard learned counsel for the parties and perused the record.

It is not in dispute that respondent no.2 retired from service of the petitioner after enforcement of the Rajasthan Non Government Educational Institutions Act, 1989 (in short the Act of 1989). All these arguments which have been raised in this matter came to be considered by Full Bench of this Court in S.R. Higher Secondary School & Anr. VS. Raj. Non-Government Educational Institutions Tribunal, Jaipur & 23 Ors 2002(3) WLC (Raj.) 586 wherein on consideration of various provisions of the Act and the Rules, the Full Bench in para no.20 of the judgment held that selection scale given to the teacher shall certainly fall within the four corners of the definition of "Salary" as defined in Section 2(r) of the Act of 1989. The court held that selection scale being part of salary, once the State Government decided to provide grant-in-aid in accordance with Sections 7(3) and 7(4) of the Act, it leaves no

room for the sanctioning authority to exercise its discretion to grant or not to grant the aid in regard to the items covered under Sections 7(3) and 7(4) of the Act. With regard to payment of leave encashment, the Full Bench held that teachers working in such government educational institutions are entitled for encashment of privilege leave on their retirement, since the leave encashment is allowance and the teachers in these institutions would also have right to claim such allowance. The question with regard to payment of gratuity was examined by the Hon'ble Supreme Court in Rajasthan Welfare Society Vs. State of Rajasthan JT 2005 (4) SC 163. In that the Hon'ble Supreme Court held that the gratuity within the meaning of the Act and the Rules cannot form part of recurring grant. It is not includable as part of approved expenditure for the purposes of computing the amount of grant payable to the appellant. The Hon'ble Supreme Court in concluding part of the judgment further observed that "if representations are made by aided Non-Government Educational Institutions, the State Government would consider sympathetically the question of the gratuity

amount payable to the employees being taken into consideration for the purpose of computing the amount of grant-in-aid". It was further clarified that "pending making of such representation and its consideration, the payment of gratuity to the employees shall not be delayed".

In view of the the above, the writ petition is dismissed. It is however clarified that the college would be free to make representation to the State Government in terms of the observations made by the Hon'ble Supreme Court in para no.16 of its judgment in Rajasthan Welfare Society (supra).

There shall be no order as to costs.

(MOHAMMAD RAFIQ),J.

c.p.goyal/-